

**STAFF REPORT FOR CALENDAR ITEM NO. 12
FOR THE MEETING OF: March 14, 2013**

TRANSBAY JOINT POWERS AUTHORITY

BRIEF DESCRIPTION:

The TJPA requests authorization from the Board to execute a Dispute Resolution Advisor Agreement (“DRA”) with Webcor/Obayashi Joint Venture (the “CM/GC”) in order to implement the DRA procedure referred to in the revised Claim Procedure set forth in the Contract with the CM/GC for all subsequent disputed Claims with the CM/GC and its Trade Subcontractors.

EXPLANATION:

Paragraph 13.02 of the General Conditions, Section 00 07 000, to the Contract with the CM/GC, sets forth the administrative Claim Procedure for Claims by the CM/GC directly, or by the CM/GC on behalf of its Trade Subcontractors, for additional compensation and/or time related to the performance of the Work at the Project. Under the original Claim Procedure, the party originating the claim, either the CM/GC or a Trade Subcontractor, is required to submit a narrative summary of the merits of the Claim and the clause under which the Claim is made; a chronology of events and correspondence pertinent to the Claim; an analysis of the merits of the Claim and the amount of compensation or time requested; and all documents supporting the Claim. If the Claim is submitted by the CM/GC on behalf of a Trade Subcontractor, the CM/GC also conducts a review of the Claim and, in all instances, certifies the Claim as being made in good faith and supported by accurate and complete data, and as reflecting the Contract adjustment for which the CM/GC believes the TJPA is liable. After the Claim is submitted to the TJPA, and with the CM/GC’s input, the Claim is reviewed by the TJPA’s CMO and the TJPA’s staff and a determination is made as to whether the Claim should be approved or denied. If the Claim is denied and the CM/GC or Trade Subcontractor disagrees with the TJPA’s decision, the CM/GC may request the Executive Director to review the Claim and provide a final administrative decision. Following receipt of a request for review, the Executive Director meets with the CM/GC and TJPA staff and again reviews the Claim and all relevant documents. The Executive Director then issues a decision confirming or revising the TJPA’s response to the Claim within sixty days of receiving the request for review.

Under the original Claim Procedure, there was no option for a claimant to have its Claim considered under a dispute resolution procedure. Therefore, if a Claim was denied, the claimant could initiate litigation.

Following recent discussions with the CM/GC, the Claim Procedure was revised to provide an option to the TJPA, the CM/GC, and any Trade Subcontractor to submit a Claim to a Dispute Resolution Advisor (“DRA”) before requesting review of the Claim by the Executive Director (*i.e.*, during the administrative claim process and prior to initiating litigation). The DRA procedure is an alternative dispute resolution procedure intended to enable the parties to efficiently and effectively resolve claims without incurring the expenses associated with litigation.

Under the revised Claim Procedure, after the TJPA has issued its response to a Claim and before requesting a review of the Claim by the Executive Director, the CM/GC or Trade Subcontractor may request review of and a hearing on a Claim by a DRA, who will be jointly selected by the TJPA and the CM/GC. The hearing by the DRA will occur within thirty days of a party's request for a hearing, or as soon thereafter as the DRA's calendar permits.

Under the DRA procedure, a single neutral with expertise mediating complex public construction project disputes conducts a hearing at which the participants present their respective positions on a Claim. During the hearing, the participants may present documents and oral testimony supporting their positions, including that of retained experts, and may ask questions of any witnesses. No attorneys will be permitted to participate in the DRA hearing. Following the hearing, the DRA will issue a non-binding, written decision on whether the claimant is entitled to the additional compensation and/or time requested. If requested by the parties, the DRA may also issue a non-binding, written decision regarding the amount of the compensation and/or time the claimant is entitled to receive. The decision may then be used by the parties to further evaluate their respective positions and determine if settlement of a particular Claim is appropriate.

The cost of the DRA shall be shared by the parties as follows: (1) if the Claim originates from the CM/GC, the cost of the DRA shall be shared equally by the TJPA and the CM/GC; or (2) if the Claim originates from a Trade Subcontractor, 50% of the cost will be paid for by the Trade Subcontractor, 25% will be paid for by the TJPA and 25% will be paid for by the CM/GC. Any costs incurred under the DRA procedure will be borne by the parties and are not recoverable in any subsequent litigation.

The DRA Agreement reflects the TJPA and CM/GC's understanding as to the DRA procedure and the DRA's role in assisting the parties to resolve disputes relating to requests for additional compensation and/or time for the performance of the Work at the Project. Execution of the DRA Agreement will permit the parties to implement the DRA procedure.

RECOMMENDATION:

The TJPA staff recommends that the Board authorize the TJPA to execute the Dispute Resolution Advisor Agreement.

ENCLOSURES:

1. Resolution
2. Dispute Resolution Advisor Agreement

**TRANSBAY JOINT POWERS AUTHORITY
BOARD OF DIRECTORS**

Resolution No. _____

WHEREAS, On March 12, 2009, the TJPA Board of Directors awarded Contract No. 08-04-CMGC-000 (“Contract”) to the Webcor/Obayashi, Joint Venture (the “CM/GC”) to perform pre-construction and construction services for the Transbay Transit Center Building and Related Structures Project (the “Project”); and

WHEREAS, Paragraph 13.02 of the General Conditions, Section 00 07 000, to the Contract, sets forth the Claim Procedure for Claims by the CM/GC and its Trade Subcontractors related to requests for additional compensation and/or time related to the performance of the Work at the Project; and

WHEREAS, In consultation with the CM/GC, the TJPA has determined that the Project will benefit from a revision to the Claim Procedure to include, among other items, an option to submit Claims to a Dispute Resolution Advisor (“DRA”), prior to the issuance of the Executive Director’s final administrative decision, for an independent, neutral and non-binding review and written recommendation on whether additional compensation and/or time is owed for work performed on the Project; and

WHEREAS, A Field Change Order has been issued to reflect the revised Claim Procedure incorporating the aforementioned modification; and

WHEREAS, The DRA Agreement reflects the TJPA and CM/GC’s understanding as to the DRA procedure and the DRA’s role in assisting the parties to resolve disputes relating to requests for additional compensation and/or time for the performance of the Work at the Project; now, therefore, be it

RESOLVED, That the TJPA Board of Directors authorizes the TJPA to execute the DRA Agreement referred to in the revised Claim Procedure and attached hereto to implement the DRA procedure.

I hereby certify that the foregoing resolution was adopted by the Transbay Joint Powers Authority Board of Directors at its meeting of March 14, 2013.

Secretary, Transbay Joint Powers Authority

DISPUTE RESOLUTION ADVISOR AGREEMENT

THIS DISPUTE RESOLUTION ADVISOR AGREEMENT (hereafter this "Agreement") is made and entered into as of March __, 2013, by and between the Transbay Joint Powers Authority ("TJPA") and Webcor/Obayashi Joint Venture ("W/O").

RECITALS

A. On or about March 17, 2009, the TJPA and W/O entered into a Contract (the "Contract") whereby W/O agreed to serve as the construction manager/general contractor ("CM/GC") for the construction of the Transbay Transit Center Building and Related Structures Project located in San Francisco, California (the "Project").

B. TJPA is the owner of the Project and W/O is the CM/GC for the Project. TJPA and W/O shall be referred to herein collectively as the "Parties," and individually as "Party."

C. W/O has entered into, and in the future will enter into, trade subcontracts with Trade Subcontractors to perform work on the Project (the "Trade Subcontractors").

D. Pursuant to the Contract, W/O may submit a certified claim on behalf of itself or on behalf of a Trade Subcontractor to the TJPA requesting additional compensation and/or time.

E. Through a modification to the Contract, the Contract provides for the selection and use of a Dispute Resolution Advisor ("DRA") to assist in resolving any disputes among the TJPA, W/O and the Trade Subcontractors related to requests for additional compensation and/or time.

F. The Parties wish to establish a DRA procedure and select a DRA to assist in resolving the disputes among the TJPA, W/O and the Trade Subcontractors.

NOW, therefore, based on the exchange of valuable consideration, the receipt of which is expressly acknowledged, and the foregoing Recitals, which form a part of this Agreement, the Parties agree as follows:

TERMS AND CONDITIONS

I. DESCRIPTION OF DRA'S ROLE

A. This Agreement establishes the requirements for selecting and utilizing a DRA to resolve Disputes arising from the Work at the Project. A Dispute is a disagreement related to the performance of the Work at the Project that involves a request for an adjustment in compensation and/or time by the TJPA, W/O directly and/or W/O on behalf of a Trade Subcontractor. In order for a Dispute to be eligible for review by the DRA, a claimant must comply with all applicable Contract requirements, including, but not limited to, General Conditions Section 00 07 00, Paragraphs 6.03 and 13.02 (as revised); however, a Dispute may be presented for review by the DRA where there is a good-faith disagreement over whether such compliance has occurred without prejudice to TJPA's right to assert alleged non-compliance as a defense to any Dispute. The DRA will assist the TJPA (including its Executive Director), W/O and any involved Trade Subcontractor by facilitating the timely resolution of Disputes. The DRA is to fairly and impartially consider Disputes placed before him/her at a Dispute Hearing. At the Dispute Hearing, the TJPA, W/O and any involved Trade Subcontractor (the "Participants") will present evidence in support of their respective positions to the DRA. Following the Dispute Hearing, the DRA will issue a written recommendation with respect to the request for an adjustment in compensation and/or time.

B. The DRA shall provide a recommendation based on the facts related to the Dispute, the Contract, any applicable trade subcontract, and applicable State and Federal laws and regulations.

II. DRA'S QUALIFICATIONS

A. The DRA shall have a minimum of ten (10) years experience managing, mediating, and/or addressing construction issues that arise on large Federal, State, or local public projects.

B. The DRA shall have no prior direct or indirect involvement in the Project. For a period of two years prior to the effective date of this Agreement, the DRA shall not have been employed or engaged by the TJPA, W/O, any of the Trade Subcontractors, or any Project subcontractors, suppliers or consultants for any purpose, nor shall he/she have been involved in any project involving the TJPA, W/O, any of the Trade Subcontractors, or any Project subcontractors, suppliers or consultants that are involved in a Dispute under this Agreement. The DRA shall not have any direct or indirect ownership or financial interest in W/O, any of the Trade Subcontractors, or any Project subcontractors, suppliers or consultants involved in the Project during the term of this Agreement.

C. The DRA shall fully disclose all past, current and future direct and indirect professional or personal relationships with the TJPA, W/O, any Trade Subcontractor, or any Project subcontractors, suppliers or consultants, and any of their officers, directors or employees.

D. In the event that the DRA becomes aware of or has a reasonable belief that a conflict of interest may exist between him/her and the TJPA, W/O, any of the Trade Subcontractors, or any Project subcontractors, suppliers or consultants involved in the Project, the DRA shall immediately notify the Parties. The Parties shall then jointly decide whether to replace the DRA.

III. DRA SELECTION

Within thirty (30) days of executing this Agreement, the Parties shall select a mutually agreeable DRA. The Parties shall not unreasonably withhold their consent.

IV. DRA OPERATION

Preliminary Procedures

A. Following selection of the DRA, the TJPA and W/O shall meet with the DRA to further refine the procedures set forth herein that will govern: (1) the submission of written materials to the DRA pertaining to a Dispute; (2) the conduct and procedures at a Dispute Hearing; and (3) the issuance of a written recommendation concerning the Dispute following the Dispute Hearing. Any additional procedures not set forth herein below shall only be implemented upon approval by the TJPA and W/O.

Procedures and Schedule for Dispute Hearing

B. For any "Claim" submitted in accordance with the Contract, General Conditions Section 00 70 00, Paragraph 13.02, that is denied, in whole or in part, by the TJPA pursuant to either Paragraph 13.02.I.D or 13.02.II.E, the TJPA and/or W/O may request, within ten (10) days of the TJPA's response to the Claim, a Dispute Hearing on the Claim by the DRA. The Dispute Hearing shall occur within thirty (30) days after the request for a hearing is made, or as soon thereafter as the DRA's calendar permits. In all instances, the DRA will consider the Claim as quickly as possible, taking into consideration the particular circumstances and the time required by the Parties to prepare the necessary documentation for the hearing.

C. The Parties shall be afforded an opportunity to be heard by the DRA and present evidence at the Dispute Hearing. In the case where the Dispute results from a Claim certified by W/O on behalf of a Trade Subcontractor, the Trade Subcontractor shall be afforded an opportunity to participate directly in the Dispute Hearing by presenting its own evidence. The Trade Subcontractor need not rely on W/O's presentation of the Dispute at the Dispute Hearing. Evidence may be in the form of written and electronic documents, photographs, videotapes and oral testimony by key witnesses with direct knowledge of the facts relevant to the Dispute. A Participant intending to rely upon tangible evidence at the Dispute Hearing must serve copies of such evidence on the DRA and all other Participants a minimum of fifteen (15) days before the Dispute Hearing. If the DRA requests any additional evidence

prior to, during, or after the Dispute Hearing, the Participant to whom the request is directed shall provide the requested information to the DRA and the other Participants. A Participant intending to rely upon oral testimony shall serve a list of its key witnesses, which identifies the witness' name, connection to the Dispute, and the general nature of the testimony the witness will provide a minimum of fifteen (15) days before the Dispute Hearing.

D. The DRA's written recommendation for resolution of the Dispute will be given to the TJPA, W/O, and any involved Trade Subcontractor within ten (10) days of completion of the Dispute Hearing. In cases of extreme complexity or for good cause shown, the TJPA and W/O may agree to allow additional time for the DRA to issue his/her written recommendation. The written recommendation will address: (i) entitlement; (ii) if appropriate and quantifiable, recoverable costs and other allowable damages, and (iii) an analysis of the Participants' respective positions and liability, as well as the basis of the written recommendation. If the additional compensation or time claimed is based on a good faith estimate at the time of the Dispute Hearing, the DRA shall issue a written recommendation as to entitlement only, and defer his/her determination on additional compensation and/or time until actual costs and schedule impacts are known to the claimant and such information is submitted by the claimant to the DRA.

E. Within twenty-one (21) days of receiving the DRA's written recommendation, the TJPA, W/O, and any involved Trade Subcontractor shall respond to each other signifying either acceptance or rejection of the DRA's written recommendation. If the TJPA, W/O and any involved Trade Subcontractor are able to resolve the Dispute with or without the aid of the DRA's written recommendation, the TJPA, W/O, and any involved Trade Subcontractor shall process any required Change Order to the Contract within ten (10) calendar days of such resolution. Any responses to the DRA's written recommendation are inadmissible in any subsequent litigation or other dispute resolution proceeding.

F. Although the TJPA, W/O and any involved Subcontractor should place great weight on the DRA's written recommendation, it is not binding. The DRA's written recommendation shall be admissible pursuant to applicable provisions of the California Evidence Code in a subsequent litigation or dispute resolution proceedings between the Parties provided that any Party may challenge the relevance or correctness of the recommendation.

The DRA's Consideration of Disputes

G. The Participants in a Dispute Hearing understand and agree that the DRA's written recommendation concerning any Dispute is strictly advisory in nature. It is further understood and agreed that the DRA is to act impartially and independently in considering the disputed factual and legal issues submitted to the DRA for his/her consideration. With the exception of communications regarding purely ministerial and logistical issues (*e.g.*, the timing of a Dispute Hearing), the DRA shall not discuss the substance of any Dispute with any of the Participants that may be involved in a Dispute.

H. Dispute Hearings shall be kept informal. No formal record of a Dispute Hearing shall be maintained.

I. All Participants in a Dispute Hearing must have a representative at the Dispute Hearing. The Participant originating the Claim will present its evidence first, followed by the Participant that denied the Claim, in whole or in part. Each Participant will then be allowed successive rebuttals until all aspects of the Dispute are fully covered. Subject to the discretion of the DRA, Participants may be afforded an opportunity to reasonably question any witness presenting oral evidence at the Dispute Hearing. The DRA may also ask questions, request clarification, or ask for additional data.

J. Outside and in-house lawyers shall not be permitted to speak, present evidence or argue at any Dispute Hearing. A Participant presenting evidence may retain the services of an outside expert or consultant to present information at the Dispute Hearing, subject to the DRA's approval. The Participant utilizing the services of an outside expert or consultant must disclose the name of the outside expert or consultant and the anticipated topics the outside expert or consultant may testify about at the Dispute Hearing no later than seven (7) days prior to the scheduled Dispute Hearing.

K. During the Dispute Hearing, the DRA will not express any opinion concerning the merits of the Dispute.

L. The DRA shall not divulge any information acquired in connection with a Dispute or at a Dispute Hearing without obtaining prior written approval from the TJPA and W/O.

M. The DRA may not be called as a witness in any subsequent legal proceedings involving any issue related to the Project.

V. NO IMPACT ON LEGAL RIGHTS

Nothing contained in this Agreement is intended to foreclose, waive, impair or restrict any Party's right to pursue any claim against the other Party through litigation, arbitration or any other form of dispute resolution allowed by the Contract. The Parties' attempt to resolve a Dispute in accordance with the DRA procedures outlined in this Agreement shall have no bearing whatsoever on any Party's right to seek legal or equitable relief under the Contract after all contractual administrative remedies under the Contract have been exhausted.

VI. TJPA'S RESPONSIBILITIES

A. The TJPA shall provide to the DRA a complete copy of the Claim underlying a Dispute and any related documents which were submitted to the TJPA for its consideration. The TJPA shall also provide to the DRA a complete copy of all other pertinent documents relating to a Dispute. Pertinent documents include, but are not limited to, drawings and BIM data, sketches, specifications, calculations, procedures, change order requests, change orders, clarifications/RFIs, schedules, estimates, correspondence (including emails), supporting cost records or other documents which are used in the performance of the Work or in justifying or substantiating the TJPA's position. Copies of such pertinent documents and any documents on which the TJPA may rely at the Dispute Hearing must also be furnished to the other Participants in the Dispute Hearing.

B. The TJPA will not solicit advice or consultation from the DRA on matters dealing in any way with the Project, the Contract, or the performance of the Work at the Project.

VII. W/O'S RESPONSIBILITIES

A. W/O shall provide to the DRA a complete copy of the Claim underlying a Dispute and any related documents, which were submitted to W/O for its consideration. W/O shall also provide to the DRA a complete copy of all pertinent documents relating to a Dispute. Pertinent documents include, but are not limited to, drawings and BIM data, sketches, specifications, calculations, procedures, change order requests, change orders, clarifications/RFIs, schedules, estimates, correspondence (including emails), supporting cost records or other documents which are used in the performance of the Work or in justifying or substantiating the W/O's position. Copies of such pertinent documents and any documents on which W/O may rely at the Dispute Hearing must also be furnished to the other Participants in the Dispute Hearing.

B. W/O shall not solicit advice or consultation from the DRA on matters dealing in any way with the Project, the Contract, or the performance of the Work at the Project.

C. W/O shall incorporate this Agreement into its trade subcontracts with its Trade Subcontractors and shall notify the Trade Subcontractors of their right to participate in a Dispute Hearing in the event that their Claims are subject to this DRA procedure.

D. W/O shall further require the Trade Subcontractors to share in the DRA's fees and expenses as set forth in Section IX below.

VIII. DURATION OF AGREEMENT

This DRA Agreement is entered into for an initial term of two (2) years. Following expiration of this initial term, this DRA Agreement shall remain in place unless terminated, with or without cause, by either Party on sixty (60) days written notice to the other Party and the DRA; however, in no event shall this DRA Agreement remain in place after the date that the TJPA administratively closes the Contract.

IX. PAYMENT

Payment to the DRA for services rendered shall be provided as follows:

A. Where a Dispute involves a claim originally submitted to W/O by a Trade Subcontractor, responsibility for the DRA's fees and expenses for services rendered under this Agreement shall be allocated as follows:

50% by the Trade Subcontractor
25% by the TJPA
25% by W/O

Any expenses of the DRA (*e.g.*, meals, lodging, travel, expert fees, copying, etc.) shall be reimbursed at actual cost with no mark-up. In instances where the DRA considers more than one Dispute at the Dispute Hearing, the DRA shall make a good faith estimate of the percentage of his/her time dedicated to each Dispute. Each participant's responsibility for the DRA's fees and expenses shall be based on the DRA's good faith estimate using the allocation percentages set forth above.

B. Where a Dispute does not involve a Claim originally submitted to W/O by a Trade Subcontractor, the Parties shall share equal responsibility for the DRA's fees and expenses for services rendered under this Agreement.

C. The DRA shall submit his/her invoice for fees and expenses to W/O by the 25th day of each month. Within fourteen (14) calendar days of receipt, W/O shall send an invoice to the TJPA and any involved Trade Subcontractor for their portion of the DRA's monthly invoice. The TJPA, W/O and any involved Trade Subcontractor shall remit their portion of the DRA's invoice directly to the DRA within sixty (60) days of the date W/O forwards the DRA's invoice to the TJPA and any involved Trade Subcontractor.

D. Such payments shall constitute full compensation for work performed or services rendered, and for all labor, materials, supplies, equipment, and incidentals necessary to the operation of the DRA. The DRA shall comply with all applicable portions of 48 C.F.R. 31 (Federal Acquisition Regulations: Contract Cost Principles and Procedures).

E. The DRA will be paid based on an agreed hourly rate, with a not-to-exceed daily amount, excluding expenses. Any subsequent changes in the DRA's hourly rate and/or maximum daily limit must be authorized in writing and by agreement between the Parties and the DRA. The TJPA and W/O will enter into a separate services agreement with the DRA following the DRA's selection. This Agreement will be attached as an exhibit to the services agreement and incorporated therein.

F. Any costs (including, but not limited to, project personnel costs, DRA fees and costs, expert and consultant costs, and attorneys' fees and costs) incurred by any Participant arising out of or related to a Dispute Hearing shall be borne by the Participant. Such costs shall not be submitted to the TJPA for payment at any time and are not recoverable against the TJPA in any subsequent arbitration, litigation or other dispute resolution procedure.

X. ASSIGNMENT OF TASKS OF WORK

The DRA shall not assign any of the work to be performed under this Agreement.

XI. TERMINATION OF DRA

The DRA may be terminated with or without cause jointly by the TJPA and W/O on sixty (60) days written notice to the DRA. The selection of a replacement DRA shall begin promptly upon notification of the necessity for a replacement DRA and shall be completed within thirty (30) calendar days. Once a new DRA is selected, the Parties and the new DRA shall execute a written services agreement confirming the selection of the DRA.

XII. WITHDRAWAL OF DRA

The DRA may withdraw under this Agreement by providing sixty (60) days written notice to the TJPA and W/O. The withdrawal of the DRA shall not result in the termination of this Agreement. The selection of a replacement DRA shall begin promptly upon notification of the necessity for a replacement DRA and shall be completed within thirty (30) calendar days. Once a new DRA is selected, the Parties and the new DRA shall execute a written services agreement that memorializes the change in the DRA.

XIII. LEGAL RELATIONS

A. The Parties hereto mutually understand and agree that the DRA is acting in the capacity of an independent agent and not as an employee or agent of the TJPA or W/O.

B. The TJPA and W/O agree that the DRA shall not be personally liable for any act or omission performed in the scope of his/her employment as the DRA unless such the DRA acted: (i) in bad faith; (ii) with malicious purpose; or (iii) in a manner exhibiting wanton and willful disregard of his/her responsibilities under this Agreement.

C. This Agreement creates no third party rights on behalf of any person or entity.

XIV. VENUE, APPLICABLE LAW

In the event that the TJPA or W/O deems it necessary to institute legal proceeding to enforce this Agreement, it must do so in San Francisco, California. The Parties agree that all questions shall be resolved by application of California law.

XV. PUBLIC RECORDS

A. The DRA, W/O, and the TJPA shall allow public access to all documents, papers, letters, and other material made or received by the Parties to this Agreement to the full extent required by California law. Upon receipt of any public records request, the TJPA must immediately notify W/O (and any affected Trade Subcontractor) and obtain W/O's prior written consent before releasing any requested records that may contain proprietary, trade secret, or business-sensitive information. Upon W/O's receipt of any third-party subpoena seeking documents produced to the DRA, W/O shall immediately notify TJPA and obtain TJPA's prior written consent before releasing the requested records.

B. The DRA shall keep available the cost records and accounts pertaining to this Agreement for inspection by representatives of W/O and the TJPA for a period of three years after final payment (the "Retention Period") to the DRA. At that time, all such cost records and accounts shall be delivered to the TJPA for further retention as may otherwise be required. Notwithstanding the foregoing, if any litigation, claim, or audit arising out of the Contract is initiated prior to expiration of the Retention Period, the cost records and accounts shall be retained until such litigation, claim, or audit involving the records is completed.

XVI. MISCELLANEOUS

A. The Parties hereto understand and agree that each Party has a right to enforce the terms and conditions of this Agreement.

B. Each Party warrants and represents that the individual executing this Agreement has the right, power, and authority to do so.

C. Each Party understands and agrees that the headings are used only for the convenience of the Parties. The Parties agree that these headings shall have no evidentiary value whatsoever in any action to enforce the terms of this Agreement.

D. It is expressly agreed and understood that all agreements and understandings between the Parties regarding the use of a DRA are embodied and expressed herein and in Paragraph 13.02 of the General Conditions, Section 00 07 00, and that this Agreement and Paragraph 13.02 of the General Conditions, Section 00 07 00, contains the entire agreement between the Parties regarding the use of a DRA. This Agreement fully supersedes any and all prior agreements or understandings, whether written or oral, between the Parties pertaining to the use of a DRA. This Agreement may not be modified or amended except in writing, signed and executed by all Parties.


E. This Agreement is the product of negotiations between the Parties, which have been represented by counsel, and it shall not be construed in favor of or against any Party as the drafting party.

F. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective heirs, executors, representatives, successors in interest, predecessors in interest, and assigns, as the case may be.

G. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument. Facsimile signatures may be utilized in the execution of this Agreement. The Parties agree that facsimile signatures are binding in the same manner and degree as an original signature.

IN WITNESS WHEREFOR, the Parties hereto have executed this Agreement as of the day and year first written above.

WEBCOR BUILDERS - OBAYASHI CORPORATION, A JOINT VENTURE

By: 
Title: President / CEO

TRANSBAY JOINT POWERS AUTHORITY

By: _____
Title: _____